

HUMAN RESOURCES POLICY
Fauquier County, Virginia

Policy Title: Family and Medical Leave
Section No.: 2-G

Effective Date: 6/18/01
Supersedes Policy: 10/06/98

I. PURPOSE

It is the objective of the Board of Supervisors to provide eligible employees with up to 12 weeks of family and/or medical leave in accordance with the Family and Medical Leave Act of 1993 (FMLA).

II. SCOPE

This policy applies to all permanent full-time and permanent part-time employees.

III. DEFINITIONS

A. Family/Medical Leave

Family/Medical Leave is defined as a leave without pay (or use of an employee's accrued leave) for up to 12 weeks during a calendar year for the following reasons:

1. due to the birth of a child or the placement of a child with an employee for adoption or foster care,
2. because the employee is needed to care for a family member (child, spouse or parent) with a serious health condition,
3. because an employee's own serious health condition makes him/her unable to do his/her job.

B. Eligible Employees

Eligible employees shall be defined as permanent full-time or permanent part-time employees who have been employed by the general government for at least 12 months and worked at least 1,250 hours (as designated by the Federal FMLA law) during the 12 months before the start of the leave.

The required 1,250 hours do not have to be worked during consecutive months, however, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave.

C. Employment Benefits

Employment benefits, for the purposes of this policy, shall be defined as benefits provided by the general government to eligible employees including group life insurance, health insurance, annual and sick leave.

D. Health Care Provider

For the purposes of this policy, health care providers shall include the following:

1. a doctor of medicine or osteopathy who is licensed to practice medicine or surgery by the state in which he/she practices;
2. any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and
3. others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law, and Christian Science practitioners.

E. Key Position

A key position shall be defined as a position occupied by an employee who is among the highest paid 10 percent of all general government employees.

F. Spouse

A spouse shall be defined as a husband or wife as recognized under the laws of the Commonwealth of Virginia for the purposes of marriage.

G. Parent

A parent shall be defined as a biological parent or individual who served as the employee's parent and was charged with the duties and responsibilities of the parent. A parent does not include a parent-in-law.

H. Son or Daughter

A son or daughter shall be defined as a biological, adopted or foster child; step-child; legal ward; or other persons for whom the employee acts in the capacity of a parent. The child must be under age 18 or be age 18 or older and incapable of self-care due to a mental or physical disability.

I. Serious Health Condition/Illness

A serious health condition/illness shall be defined as an illness, injury, impairment or physical or mental condition that involves

1. inpatient care in a hospital, hospice or residential medical care facility; or
2. continuing treatment by a health care provider.

IV. **PROCEDURES**

A. FMLA For Eligible Full-time Employees

Eligible full-time employees may take up to 12 workweeks of unpaid family and medical leave per calendar year for the following reasons:

1. the birth of a child (to be taken within 12 months of the child's birth);
2. the placement of a child with the employee for adoption or foster care (to be taken within 12 months of the date of placement);

(FMLA associated with child birth or child placement shall be taken in one block of time up to 12 weeks, unless the employee and supervisor agree otherwise.)

3. in order to care for a child, a dependent son or daughter over 18 years of age who is incapable of self-care due to a mental or physical disability, a spouse or a parent who has a serious health condition that involves
 - a. in-patient care in a hospital, hospice, or residential medical care facility; or
 - b. continuing treatment by a health care provider;

4. because of a serious personal health condition that renders the employee unable to perform the functions of his/her position.

The general government may request certification that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

B. FMLA For Eligible Part-time Employees

1. Eligible part-time employees may take up to 12 workweeks of unpaid family and medical leave in a calendar year for the reasons listed in III,A above.
2. Actual hours taken shall be counted on a prorated basis corresponding to the percentage of hours employees are normally scheduled to work during a calendar year.

C. Restricted Use Of Family And Medical Leave

1. The time missed from work due to FMLA shall not exceed 12 weeks in a calendar year.
2. Family and medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and outpatient surgical procedures with expected brief recuperating periods. FMLA does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu.
3. FMLA leave and workers' compensation leave shall run concurrently, provided the reason for the leave is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

D. Paid Leave

1. Employees have the option of using paid leave for absences covered under family and medical leave.
2. Employees participating in the sick leave bank may substitute paid sick leave bank leave only for FMLA leave taken for the employee's own serious medical condition. The sick leave bank is not available for other FMLA uses.
3. FMLA does not change any general government leave policies.
4. If an employee's accrued leave balances are used for FMLA, the employee shall be entitled to the number of unpaid workdays which, when combined with the number of days of other leave taken, equal 12 workweeks.

E. Intermittent Leave And Reduced Scheduled Leave

1. When medically necessary because of an eligible employee's own serious health condition or the serious health condition of a child, spouse or parent, an employee may take family or medical leave on an intermittent leave basis or on a reduced schedule.
2. An intermittent leave schedule is a leave schedule that permits the employee to take leave periodically for a few hours a day, or for a few days, on an as-needed basis.
3. A reduced schedule is a leave schedule permitting the employee to reduce his/her usual number of hours worked per workweek or per workday.
4. Intermittent leave may be charged in no less than one-half hour increments.
5. While an employee is on an intermittent or reduced leave schedule, the general government may temporarily transfer the employee to an alternative position which better accommodates the recurring leave as long as the new position carries equivalent pay and benefits.

F. Notice Of Leave

1. If possible, an employee must submit a written request for family and medical leave at least 30 days before the anticipated beginning of the leave. If an emergency or unforeseen event precludes such advance notice, the employee must give notice as soon as possible.
2. Any leave taken by an employee that may be covered under the Family and Medical Leave Act must be designated as Family/Medical leave.

G. Certification Of Need For Leave

1. An employee requesting family and medical leave must complete the Family/Medical Leave Certification Form within 15 days from the date leave is requested.
2. Failure to provide the requested medical certification in a timely manner may result in denial of leave until the certification is provided.
3. The general government may require, at its own expense, a second opinion. The health care provider cannot be one who is employed by the general government on a regular basis.

4. If the second opinion differs from the first, the general government may, at its own expense, require a third opinion from a health care provider designated or approved jointly by the employee and the general government. The opinion of the third health care provider shall be considered final and binding upon the employer and the employee.
5. The general government may require an employee to report periodically during the leave period on his/her leave status and intention to return to work, and to provide subsequent re-certifications on a reasonable basis.

H. Status Of Benefits

1. Health Insurance

The general government will continue to contribute to the health insurance premiums of employees covered under FMLA as discussed below:

- a. When an employee is using paid leave under the provisions of FMLA, the payroll deductions for the employee portion of the health insurance premiums continue.
- b. When an employee is on leave without pay under the provisions of FMLA, the employee portion of the health insurance premiums must be paid by the employee.

If an employee fails to make premium payments, the general government will follow the same procedures to terminate coverage as it would if the employee failed to pay premiums while on a leave without pay status. An employee will be allowed to re-enroll in the health insurance program upon return to work from family and medical leave.

- c. If an employee fails to return to work at the end of leave under FMLA, he/she will be required to reimburse the general government for the cost of the premiums paid by the general government for maintaining coverage during the leave.

There will be no recovery of premiums if an employee fails to return to work due to a serious health condition or other circumstances beyond his/her control.

2. Life Insurance

The general government will continue to pay life insurance premiums while an employee is on family and medical leave.

3. Leave Accrual

An employee will not accrue annual or sick leave during any period of leave without pay.

I. Returning From Leave

An employee who takes leave because of his/her own serious health condition may be required to provide medical certification that he/she is fit to resume work. An employee failing to provide the requested medical certification will not be permitted to resume work until the certification is submitted.

J. Restoration To Position

1. At the end of family and medical leave, an employee is normally to be reinstated as follows:
 - a. Original position – the general government must restore an employee to the position he/she held when the leave began unless he/she held a key position which needed to be filled during the absence.
 - b. Equivalent position – if the previous position has been filled, an employee is entitled to restoration to an equivalent position.
 - c. Conditions upon restoration of job position – the general government may require an employee to report periodically on his/her status and intent to return to work, and can require certification from health care providers that the employee is able to return to work.
2. If an employee's position is determined to be key, he/she may be denied restoration when:
 - a. the general government shows that denying restoration is necessary to prevent substantial economic injury to its operations;
 - b. the general government notifies the employee that restoration will be denied at the time it determines that substantial economic injury would occur; and
 - c. the employee already has begun the leave and elects not to return to employment within a reasonable time after receiving the general

government's notice.